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IN THE

Supreme Court of the United States

KINGSLEY BOOKS, INC., MARTIN KLEINBERG and LOUIS FINKELSTEIN, doing business as Times Square Book Shop,

and

METROPOLITAN BOOK SHOP, INC., ANNE GOLDBERG, PHILIP PELEGRINO, doing business as Pelley Book Shop, Publishers Outlet and Gordon Law,

Appellants.

against

PETER CAMPBELL BROWN, as Corporation Counsel of the City of New York,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF OF ATTORNEY GENERAL OF THE STATE OF NEW YORK, *AMICUS CURIAE*, BY INVITATION OF THE COURT, IN SUPPORT OF CONSTITUTIONALITY OF NEW YORK CODE OF CRIMINAL PROCEDURE, SECTION 22-a

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Statement

This brief is filed by the Attorney General of the State of New York, in support of the constitutionality of Section 22-a of the Code of Criminal Procedure of New York, which is an issue on this appeal.

This Court invited the Attorney General of New York, by order entered March 25, 1957, to file a brief, as *amicus*

curiae. Such order was entered in a motion made by the Attorney General to appear and present oral argument and file a brief *amicus curiae*. The motion to appear and present oral argument was denied. In a letter dated March 26, 1957, Honorable J. T. Fey, Clerk of this Court, by Honorable E. P. Cullinan, Deputy, wrote to the Attorney General that "The Court would like to have presented a full discussion of the legislative history of the statute in issue as well as any memoranda that may have been submitted by the Governor of New York pertaining to this legislation."

Facts

The action for injunction brought against appellants here, by the Corporation Counsel of the City of New York, pursuant to Section 22-a of the Code of Criminal Procedure of New York, involved published booklets offered for sale entitled "Nights of Horror". After trial by a Justice of the Supreme Court of the State, the injunction was granted as to such booklets already published and offered for sale. The Trial Court construed the statute as not permitting injunction of future publications of the booklets or of pamphlets in a series to be published in the future, and the Court of Appeals agreed with this construction (R. pp. 67, 88; 208 Misc. at pp. 168-9; 1 N. Y. 2d at p. 187).

Appellee's brief sets forth the facts in the case and the proceedings had therein in detail at pages 1-3, 4-8. In the interest of limiting the length of this brief, such details will not be repeated here. The nature of these booklets is graphically described in the opinion of the Trial Judge (R. pp. 51-4; 208 Misc. 157-9, 160) and is referred to in the opinion of Judge Fuld in the Court of Appeals (R. p. 80; 1 N. Y. 2d 180). Appellants have not disputed that. They have indeed indicated that they assume they

could be prosecuted criminally for the sale of these booklets, under the obscenity provisions of the Penal Law.

Jurisdiction

Jurisdiction was noted in the instant case on January 14, 1957.

The Statute Involved

Section 22-a of the Code of Criminal Procedure of the State of New York.

The statute involved is Section 22-a of the Code of Criminal Procedure of New York, which authorizes the chief executive officer of any city, town or village or the corporation counsel, or if there be none, the chief legal officer of any city, town or village, to bring an action for an injunction to prevent the sale or distribution of "any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, drawing, photograph, figure, image or any written or printed matter of an indecent character which is obscene, lewd, lascivious, filthy, indecent or disgusting".

Subdivision 2 of the section provides that the person sought to be enjoined "shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the Court within two days of the conclusion of the trial."

The text of the section is set out in full as Appendix I to this Brief.

The Penal Law of the State, Section 1141 thereof, makes it a misdemeanor to sell or distribute the items which are the subject of Section 22-a (R. p. 79; 1 N. Y. 2d 179).

Section 22-a of the Code of Criminal Procedure as First Enacted in 1941.

The statute was originally enacted in 1941 (L. 1941, c. 925).

As originally enacted it differed from its present form in that only the chief executive officer of a city, town or village was authorized to maintain the action for injunction. As originally enacted it also contained a provision which was deleted in 1954 after the decision of this Court in *Winters* v. *New York*, 333 U. S. 507. (The portion deleted in 1954 had included in the publications which could be enjoined, any which are "principally made up of criminal news, police reports or accounts of criminal deeds, or pictures, or stories of deeds, of bloodshed, lust or crime.")

There is no legislative record available relative to the enactment of Section 22-a in 1941.

Nor does there appear to have been a memorandum by the Governor when he approved the bill.

Legislative History of Section 22-a of the Code of Criminal Procedure of New York in its present form, as amended in 1954.

In 1949 a Joint Legislative Committee to Study the Publication of Comics was created by the Legislature of the State of New York. The name of the Committee was changed in 1955 to "Joint Legislative Committee Studying the Dissemination of Objectionable and Obscene Materials".

The Committee consists of members of the two legislative bodies of the State, the Senate and the Assembly.

The appearance in great numbers in recent years of so-called comic books which are in no way related to

comedy, but are devoted to obscenity, pornography, lewdness, lasciviousness, indecency and filth, prompted the Legislature to create a Legislative Committee to make a survey of the problem which it deemed to be acute, and to find some way of dealing with it. The resolution creating the Committee declared in part that its function was to recommend to the Legislature "such appropriate remedial legislation as may be found necessary or desirable, without in any way restraining or breaching the liberty of the press." (1954 N. Y. Legis. Doc. #60, p. 25).

The Committee held public hearings in 1950 and 1951 at which experts on the subject, including psychiatrists, children's court judges, county judges, district attorneys, probation officers, cartoonists, publishers and newspaper editors, testified (1954 N. Y. Legis. Doc. No. 37, p. 9).

The 1954 Report of the Committee noted the failure of the comic book industry to cleanse itself and accordingly recommended the enactment of several remedial statutes, three of which became law in that year. One of these statutes, increases the minimum fine provided in Section 1141, subdivision 2 of the New York Penal Law for the crime of hiring any minor or child to assist in the sale or distribution of obscene articles prohibited by that statute (L. 1954, c. 703).

Another bill recommended by the Committee, and enacted in 1954, prohibits "tie-in" sales which compel the purchaser of books, magazines or periodicals to receive for resale articles, books, or other publications which he reasonably believes to be "obscene, lewd, lascivious, filthy, indecent or disgusting" (L. 1954, c. 702).

The third law enacted that year is the amendment to the law involved in this appeal, Section 22-a of the Code of Criminal Procedure, to bring it to its present form.

The Governor on April 15, 1954 approved the three bills in a single memorandum, which is here set out in full (L. 1954, c. 704):

STATE OF NEW YORK

EXECUTIVE CHAMBER

ALBANY

April 15, 1954

MEMORANDUM filed with the following bills:

Assembly Bill, Introductory Number 2839, Print Number 2963, entitled:

"AN ACT to amend the code of criminal procedure, in relation to the publication of obscene literature"

Assembly Bill, Introductory Number 2719, Print Number 2843, entitled:

"AN ACT to amend the penal law, in relation to increasing fine on conviction of persons guilty of distributing obscene prints and articles"

Assembly Bill, Introductory Number 2753, Print Number 2877, entitled:

"AN ACT to amend the penal law, in relation to distribution of indecent articles"

APPROVED

These three bills, sponsored by the Joint Legislative Committee to Study the Publication of Comics, are designed to strengthen the penal statutes relating to the sale and distribution of obscene publications.

The first bill extends the power to bring proceedings to enjoin the sale or distribution of obscene literature—specifically including comic books—to the corporation counsel or chief legal officer of a city, town or village. The statute is also strengthened by eliminating provisions of doubtful constitutionality.

The second bill increases the minimum fine for the sale or distribution of obscene literature from $50 to $150.

The third bill is aimed at the practice of tie-in sales which compel the dealer to accept objectionable magazines and books in order to obtain standard publications of unquestioned propriety. The bill makes clear that a dealer cannot be compelled to accept any publication which he reasonably believes to be obscene or indecent. The economic coercion involved in the tie-in sale is particularly repellent when used for the promotion or exploitation of obscene materials.

In its most recent report the Joint Legislative Committee states:

> "In instance after instance, this Committee, and the groups involved, have been met with the protests of retailers to the effect that any large-scale refusal on their part to accept from the distributors or publishers the consignments of objectionable literature, would result either in the complete loss of franchise, or in the withholding of certain legitimate publications from the dealer involved. Ample evidence has been presented to substantiate the reality of this practice." (Report of the New York State Committee to Study the Publication of Comics (1954) pp. 32, 33)

The bills are approved.

(Signed) THOMAS E. DEWEY

Since 1954 other statutes recommended by the Joint Legislative Committee have been enacted directed to coping with the problem of obscene publications. These are set forth in Appendix II to this brief.

The Holding in this Case by the Trial Court and the Court of Appeals.

The opinion of the Trial Court appears at pp. 44-74 of the Record, and is reported in 208 N. Y. Misc. Rep. 150.

The opinions of the Court of Appeals appear at pp. 79-91 of the Record and are reported in 1 N. Y. 2d 177.

Both opinions, one by Judge Fuld, (in which Judges Dye and Van Voorhis concur), and another by Judge Desmond in which Chief Judge Conway and Judge Froessel concur, reach the same conclusion by different reasoning.

The Trial Court held:

1. The booklets, illustrated by drawings, "are obscene and constitute pornography — 'dirt for dirt's sake'" (R. p. 55; 208 Misc. at p. 160). The contents of the booklets are described in the opinion (R. pp. 51-4; 208 Misc. at pp. 157-160).
2. Under the principle voiced by this Court, in a number of cases, enjoining the sale of "Nights of Horror", which is "totally lacking in merit" and "so obviously pornographic in intent", "poses no threat to freedom of expression in literature or otherwise" (R. pp. 57-8; 208 Misc. 161).
3. The punishment of the sellers of obscene publications under Penal Law § 1141 was found by the New York State Joint Legislative Committee not to meet the problem they present, for the purveyors are willing to accept occasional convictions and prison sentences in return for the profit that there appears to be in this business. Accordingly the Joint Legislative Committee deemed the action for injunction necessary. The Court on the evidence before it could not say that the Legislature's

conclusion was without basis or was erroneous (R. pp. 60-1; 208 Misc. 162-3).

4. There is no "prior restraint" in this statutory provision, since it provides "adequate notice, judicial hearing", "an adversary hearing", "an opportunity for the Court to read and examine the publications objected to" (R. pp. 62-3; 208 Misc. 164).
5. Construed § 22-a as authorizing injunction of sale or distribution, only of books already published, and not of later or not yet published issues (R. pp. 67-8; 208 Misc. at pp. 167-8).
6. This Court has declared, in *Near* v. *Minnesota*, 283 U. S. 697, 702, that there is a limitation on and there are exceptions to the constitutional protection against prior restraint, saying:

   "the primary requirements of decency may be enforced against obscene publications * * *. The security of the community may be protected against incitements to acts of violence". This statute comes within that holding in the *Near* case (R. p. 64; 208 Misc. at p. 165).

The Court of Appeals held:

1. Construed the "limited injunctive remedy" provided in § 22-a as "not [to] be condemned as a forbidden prior restraint" (Op. of Judge Fuld, R. p. 88; 1 N. Y. 2d at p. 187).
2. Construed § 22-a as containing "nothing" that constitutes or resembles a system of "threshold" approval, or scrutiny prior to publication. It may be invoked "only after publication". There must be "formal adjudication of obscenity after a trial conducted in accordance with the essential requirements of due process of law". The Trial Judge's

findings are subject to appellate review on the facts as well as on the law. "Examination of the operation and effect of § 22-a reveals substantially no greater interference with the freedom of the publisher or vendor than that presented by the possibility of punishment under the Penal Law". (Op. of Judge Fuld, R. pp. 86-7; 1 N. Y. 2d pp. 185-6; see also Op. of Judge Desmond, R. p. 91; 1 Y. 2d at p. 190: "No one claims that section 22-a lacks appropriate procedural protections for those sued under it").

3. Construed § 22-a as not permitting injunction against sale or distribution of any future work in the same series (Op. of Judge Fuld, R. p. 88; 1 N. Y. 2d at p. 187).

4. Distinguished the statute involved in *Near* v. *Minnesota*, 283 U. S. 697, noting particularly (a) that the *Near* case involved polities whereas § 22-a deals with "erotics", and "Nights of Horror" are "unredeemed by even an iota of idea content or of artistic worth"; (b) § 22-a (unlike the Minnesota statute) imposes "no restraint of any kind on the publication or distribution of material to be written or produced in the future" (Op. of Judge Fuld, R. p. 88; 1 N. Y. 2d at pp. 186-7).

5. Defendants (Appellants here) admit that the books "Nights of Horror" are obscene (Op. of Judge Fuld, R. p. 80; 1 N. Y. 2d at p. 180; Op. of Judge Desmond, R. p. 90; 1 N. Y. 2d at p. 189).

6. The books "are indisputably pornographic, indisputable, obscene and filthy" (Op. of Judge Fuld, R. p. 80; 1 N. Y. 2d at p. 180). The "obvious" fact is that the books are "obscene" (Op. of Judge Desmond, R. p. 80; 1 N. Y. 2d at p. 189).

7. The standard set up by § 22-a, "obscene, lewd, lascivious, indecent or disgusting" is a valid and definite one, declared in *Winters* v. *New York*, 333 U. S. 507 at pp. 518-520, to be "well understood through long use in the criminal law" and "apt words" "to describe the prohibited publications" (Op. of Judge Fuld, R. p. 82; 1 N. Y. 2d at p. 182; Op. of Judge Desmond, R. p. 91; 1 N. Y. 2d at p. 189).
8. The First Amendment does not protect obscene publications against prior restraint, citing decisions by this Court (Op. of Judge Desmond, R. pp. 90-1; 1 N. Y. 2d at p. 189; see also Op. of Judge Fuld, R. pp. 83-4, 89-90; 1 N. Y. 2d at pp. 183-184, 188).

Summary of Argument

I. Section 22-a of the Code of Criminal Procedure of New York, as construed by the highest court of New York, does not constitute prior restraint of publications.

II. This Court has declared many times that obscene, lewd or indecent publications are subject to control.

Argument

I

Section 22-a of the Code of Criminal Procedure of New York, as construed by the highest court of New York, does not constitute prior restraint of publications.

The highest court of New York, affirming the Trial Court, construed Section 22-a of the Code of Criminal

Procedure as authorizing an injunction only of obscene books already published. Injunction was denied as not permitted by the statute, as to future booklets in the series, before publication. (Op. of Judge Fuld, R. p. 88; 1 N. Y. 2d p. 187)

There can, then, under this statute, be no question of restraint prior to publication.

As construed by the highest court of New York, Section 22-a, and the injunction which may be granted thereunder, is thus differentiated from the Minnesota statute involved in *Near* v. *Minnesota*, 283 U. S. 697, upon which appellants base their case, and from the injunction held permissible under the Minnesota statute. It was, as Judge Fuld said, "this feature of the law" "that was regarded by the Supreme Court as of the essence of censorship and an unwarranted infringement on freedom of discussion". (R. p. 88; 1 N. Y. 2d at p. 187) See pp. 703, 705 and 710 of the *Near* opinion, 283 U. S.

Nor is there any characteristic of prior restraint in Section 22-a in the sense of a requirement of prior approval of any publication. Judge Fuld pointed out (R. p. 83; 1 N. Y. 2d at p. 182) that "no injunction may issue under Section 22-a except after a full trial of the issues". It may issue "only upon a finding that the challenged publication is of the same character and would subject the defendant to punishment under the pertinent provisions of the Penal Law". "What the statute does is to provide an additional sanction against the dissemination of obscene material".

As Judge Fuld's opinion further pointed out (R. p. 86; 1 N. Y. 2d at pp. 185-6) "there is nothing in Section 22-a that constitutes or resembles a system of licensing or other threshold approval * * * On the contrary, the statute makes no attempt to subject writings to the scrutiny and screening

of a censor prior to publication". He stressed that under § 22-a "the statutory procedures may be invoked only after publication"; that "no work may be condemned except upon a formal adjudication of obscenity after a trial conducted in accordance with the essential requirements of due process of law"; "the mind of the Trial Judge must be satisfied, from a reading of the challenged writing and a consideration of the other pertinent evidence, that it is indeed, of the type and character condemned by the statute". He called attention to the fact that the Trial Judge's findings are subject to appellate review "on the facts as well as on the law". He contrasted this procedure with the procedure when there is a censoring official, in whom a large measure of discretion is reposed and where the procedural safeguards of judicial review are not available, and with the Minnesota statute upon which the *Near* case turned, where no element of the procedure of § 22-a was provided.

II

This Court has declared many times that obscene, lewd or indecent publications are subject to control.

Appellant (Br. p. 4) states that the "sole" issue in this case is whether Section 22-a constitutes prior restraint upon publications protected by the constitutional guarantee of freedom of speech and the press.

Section 22-a has been construed by the highest Court of New York as not constituting a prior restraint (point 1, *supra*). Construction of a State statute by the highest Court of the State is treated as authoritative by this Court. (*Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572) Moreover the grounds which the New York Court of Appeals has cited for its construction are unquestionably eminently sound.

We submit that the conclusion that Section 22-a does not constitute prior restraint is the end of this case.

However, appellant has devoted much of his brief to arguing for freedom to publish the obscene. That "Nights of Horror" are booklets of unmitigated obscenity as a whole and of no literary merit or pretended literary value, appellant does not dispute and the Courts of New York have so found. (Op. of Judge Fuld, R. p. 80; 1 N. Y. 2d p. 180; Op. of Judge Desmond, R. p. 90; 1 N. Y. 2d p. 189)

That the language of the statute here is sufficiently definite and presents no question as to vagueness or uncertainty, again appellant does not dispute. Indeed this very language has had the stamp of approval of this Court. (*Winters* v. *New York*, 333 U. S. 507, 518, 520)

We come then to the expressions by this Court going back over the years and brought forward to the present day, to the effect that obscenity is subject to control, notwithstanding the guarantee of freedom of speech and of the press contained in the First Amendment. Some of these expressions we set forth here:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene * * *. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interests in order and morality".
>
> (*Chaplinsky* v. *New Hampshire*, 315 U. S. 568 at p. 572)

"Magazines * * * are * * * subject to control if they are lewd, indecedent, obscene or profane".

(*Winters* v. *New York*, 333 N. Y. 507, 510; see also pp. 518, 519, 520)

"The protection even as to previous restraint is not absolutely unlimited * * *. The primary requirements of decency may be enforced against obscene publications."

(*Near* v. *Minnesota*, 283 U. S. 697, 716)

See also:

Beauharnais v. *Illinois*, 343 U. S. 250, 266;
Hannegan v. *Esquire, Inc.*, 327 U. S. 146, 158;
Ex parte Jackson, 96 U. S. 727, 736.

In the *Near* case, *supra*, upon which appellant places his chief reliance, the Minnesota statute involved authorized injunction of two kinds of publications: "(a) an obscene, lewd and lascivious newspaper, magazine or other periodical", and (b) a malicious, scandalous and defamatory newspaper, magazine or other periodical". This Court specifically limited its holding as follows: "The statute so far as it authorized the proceedings in this action under Clause (b)" was held to be an infringement of liberty of the press. (283 U. S. at pp. 722-3)

The brief of the appellee in the action discusses the other questions in the case, and demonstrates that cases cited by appellant do not support his position. We are not repeating these matters in this brief, but have confined ourselves to the discussion of the legislative history of the statute involved and some of the fundamental principles with which the case is concerned.

We conclude the "Argument" with noting that appellant (Br. p. 41) contends that Section 22 a "prevents the book

from establishing its effect on the community". But presumably it is for the very purpose of preventing obscene speech and writing from establishing its effect on the community that this Court has said that it is not entitled to freedom to be expressed.

Conclusion

In the exercise of all of the freedoms guaranteed by the Constitution, there must be an accommodation between the individual's rights and the welfare of the society in which he enjoys these rights. This doctrine is axiomatic. Judge Fuld recalled it in his opinion in this case (R. p. 89; 1 N. Y. 2d p. 188). Mr. Justice Frankfurter stated in *Dennis* v. *United States*, 341 U. S. at p. 550:

> "Freedom of expression is the well-spring of our civilization—the civilization we seek to maintain and further by recognizing the right * * * to put some limitation upon expression."

One limitation upon freedom of expression which this Court has recognized in opinion after opinion (*supra*, Point II) is that there is no freedom of expression of the obscene.

The core of appellant's argument is resistance to the existence of any such limitation. He refers to this Court's statements of the limitations as "dicta." The Court of Appeals of New York read them as authority (R. pp. 81-2, 90-1; 1 N. Y. 2d 181, 189). The statements are, we believe, in the vein of assumption of a doctrine as to which there can be no question. And there can be no question as to the ability of society, through its government, halting the untrammeled purveying of obscenity, else the society would indeed become decadent.

Appellants throughout their brief (e.g. pp. 7-9) appear to be asking for a decision from this Court not on the issue in this case, based on the statute involved and on the sub-

ject matter of the action, but upon some hypothetical future case to which a decision in this case might some day be sought to be applied.

However, Justice Frankfurter but recently has commented on this Court's not yielding to the desire of counsel in any case to "secure comprehensive rulings". (*United States* v. *United Automobile Workers*, March 11, 1957) Two weeks earlier, in an opinion on February 25, 1957 in *Matter of Groban*, Mr. Justice Frankfurter took note of an argument made in that case, as to the extension to other proceedings of a holding by this Court that a party appearing before the Ohio State Fire Marshal was not required to be accorded the right of having counsel present. Justice Frankfurter's answer was:

> "The Due Process Clause does not disregard vital differences. If it be said that these are all differences of degree, the decisive answer is that recognition of differences of degree is inherent in due regard for due process".

This statement is in harmony with the repeated assurances by this Court that there is no reason to fear indiscriminate extension of a principle "while this Court sits". Mr. Justice Holmes in *Panhandle Oil Company* v. *Knox*, 277 U. S. 218, 223. Similarly, Chief Justice Vinson in *American Communication Association* v. *Douds*, 339 U. S. 382, 410; Mr. Justice Jackson in *Kovacs* v. *Cooper*, 336 U. S. 77, 97.

In this case are involved books of an extreme degree of obscenity, conceded by the appellants and found by the Trial Court and the Court of Appeals to be wholly obscene and of no literary merit or value. The constitutional guarantee of freedom of expression is of freedom to express ideas (*Chaplinsky* v. *New Hampshire*, *supra*, 315 U. S. 568, 572) and does not furnish protected shelter for letting loose upon society obscenity in speech or writing.

The statutory machinery provided in Section 22-a of the Code of Criminal Procedure of New York for dealing with such publications does not constitute prior restraint and affords complete due process. It has so been construed by the highest Court of New York.

The judgment appealed from should be affirmed and Section 22-a of the Code of Criminal Procedure of the State of New York declared to be in all respects constitutional.

April 15, 1957.

Respectfully submitted,

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APPENDIX I

Text of Statute Involved

Section 22-a of the Codes of Criminal Procedure of the State of New York (L. 1941, c. 925 as amended by L. 1954, c. 702 [effective July 1, 1954])

"22-a. Obscene prints and articles; jurisdiction

The supreme court has jurisdiction to enjoin the sale or distribution of obscene prints and articles, as hereinafter specified:

1. The chief executive officer of any city, town or village or the corporation counsel, or if there be none, the chief legal officer of any city, town, or village, in which a person, firm or corporation sells or distributes or is about to sell or distribute or has in his possession with intent to sell or distribute or is about to acquire possession with intent to sell or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, picture, drawing, photograph, figure, image or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy, indecent or disgusting, or which contains an article or instrument of indecent or immoral use or purports to be for indecent or immoral use or purpose; or or[1] in any other respect defined in section eleven hundred forty-one of the penal law, may maintain an action for an injunction against such person, firm or corporation in the supreme court to prevent the sale or further sale or the distribution or further distribution or the acquisition or possession of any book, magazine, pamphlet, comic book, story paper, writing paper, picture, drawing, photograph, figure or image or any written or printed matter of an indecent character, herein described or described in section eleven hundred forty-one of the penal law.

2. The person, firm or corporation sought to be enjoined shall be entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the court within two days of the conclusion of the trial.

[1] So in original. Second "or" probably should be omitted.

3. In the event that a final order or judgment of injunction be entered in favor of such officer of the city, town or village and against the person, firm or corporation sought to be enjoined, such final order of judgment shall contain a provision directing the person, firm or corporation to surrender to the sheriff of the county in which the action was brought any of the matter described in paragraph one hereof and such sheriff shall be directed to seize and destroy the same.

4. In any action brought as herein provided such officer of the city, town or village shall not be required to file any undertaking before the issuance of an injunction order provided for in paragraph two hereof, shall not be liable for costs and shall not be liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm or corporation sought to be enjoined.

5. Every person, firm or corporation who sells, distributes, or acquires possession with intent to sell or distribute any of the matter described in paragraph one hereof, after the service upon him of a summons and complaint in an action brought by such officer of any city, town or village pursuant to this section is chargeable with knowledge of the contents thereof.

APPENDIX II

Statutes Enacted in New York State in 1954-1956 Dealing With Distribution of Obscene Literature and Articles, in Addition to the Statute Involved in This Case.

[The description herein of the provisions of the several statutes refers only to their basic provision and omits details. The word "obscene" alone is used here in connection with the statutes. The statutes themselves contain additional terms describing the literature and materials to which they are made applicable]

L. 1954, c. 707—adding Section 1141-b to New York Penal Law. Prohibits "tie-in" sales compelling merchants to handle obscene literature.

L. 1955, c. 836—adding Article 49 to New York Penal Law. Makes it a misdemeanor to publish or distribute for resale publications, the title or titles of which contain the words crime, sex, horror or terror.

L. 1955, c. 832—adding to New York Penal Law § 1141 (3). Makes possession of six or more identical articles, whose sale is prohibited by Section 1141 of the Penal Law, presumptive evidence of violation of the section.

L. 1956, c. 123—amending New York Penal Law § 1141 (3). Makes possession of six or more similar articles, whose sale is prohibited by Section 1141 of the Penal Law, presumptive evidence of violation of the section.

L. 1956, c. 598—adding to New York Penal Law § 1141-c. Authorizes seizure by a peace officer of the State, of equipment used in photographing or producing, in the manner described in the section, pornographic, still or motion pictures, and vehicles other than common carriers used in the distribution of obscene articles, and forfeiture thereof.

L. 1956, c. 661—amending New York Penal Law § 1141 (1). Adds motion picture projectors to Penal Law prohibition against possession of mechanical contrivances with obscene motion pictures.

L. 1956, c. 662—amending New York Penal Law § 1141 (2). Increases the penalties for employing any minor to assist in violating the provisions of Section 1141 prohibiting the distribution of obscene articles.

L. 1956, c. 681—amending New York Penal Law § 1141 (1). Makes sale of sadistic and masochistic publications a misdemeanor.

L. 1956, c. 685—amending New York Penal Law § 1144. Permits the District Attorney to deliver seized obscene articles to the F.B.I., State Police or State or Federal investigative committees for investigation, laboratory examination or classification.

L. 1956, c. 599—amending New York Penal Law § 1143. Makes it misdemeanor to mail or transport any advertising material dealing with obscene articles.

L. 1956, c. 886—adding to New York Penal Law § 436-d. Makes it a misdemeanor to sell any publication, other than a rare book, manuscript or educational text, from which the cover or title page or other identification mark has been removed or obliterated.

L. 1956, c. 945—amending New York General Business Law §§ 330, 331. Requires every publication printed or reprinted after September 1, 1956, to have imprinted at one of the places thereof designated in the statute, the name and address of the publisher or printer. (Prior to the 1956 amendment, the statute had, for fifty years, required this information to be printed only in newspapers, magazines and periodicals.)